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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 430

VERNON C. LYONS,

Petitoner,

v.

CHICAGO PARK DISTRICT,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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VERNON C. LYONS prays that a writ of certiorari issued to review the decision of the Supreme Court of Illinois, in the above-entitled case, filed May 29, 1968.

REPORT OF THE OPINION OF THE COURT BELOW

The opinion of the Illinois Supreme Court is reported at 39 Ill.2d 584 and 237 N.E.2d 519. It is appended to this petition as Appendix A.

JURISDICTION

The judgment of the court below is dated and was entered on May 29, 1968.

The jurisdiction of this court is based on Section 1257, Title 28, United States Code, providing for appeal to this court where the constitutionality of a state statute is challenged and upheld by the highest appellate court of the state.

QUESTIONS PRESENTED

1. Is a provision of the Chicago Park District Code forbidding a person from scattering pamphlets in or upon the park system or on park property unconsitutional as violative of the right of a person to distribute a religious pamphlet under the First Amendment to the Constitution of the United States as made applicable to the State of Illinois through the Fourteenth Amendment?

2. If such an ordinance is constitutional, is it void and unconstitutional when applied to prohibit a person from distributing religious pamphlets under the First Amendment to the Constitution of the United States as made applicable to the State of Illinois through the Fourteenth Amendment?

CONSTITUTIONAL PROVISIONS AND ORDINANCE INVOLVED

United States Constitution, Amendment 1: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof: . ... or abridging the freedom of speech, or of the press;

United States Constitution, Amendment XIV, Section 1: No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; . . .

Chicago Park District Code–Section 17-11 (Littering):

> "No person shall throw, cast, deposit, damage, lay, place or scatter in or upon the park system or any park property, or appurtenance any placard, handbill, pamphlet, circular, book, notice, paper of any kind, coal, ashes, dust, manure, rubbish, garbage, refuse matter or article, or thing of any kind.
>
> "Any person violating any of the provisions of this chapter, where no other penalty is specifically provided, shall be fined not less than five dollars nor more than two hundred dollars for each offense."

STATEMENT OF THE CASE

The petitioner, Rev. Vernon C. Lyons, pastor of the Ashburn Baptist Church in Chicago, was arrested June 24, 1966 and charged with a violation of Chapter 17–Use of the parks and boulevards of the Chicago Park District–Section 11, entitled in the margin "Littering" of the Code of the Chicago Park District. The petitioner, his children and other helpers were arrested for distributing excerpts from the "New Testament" within a parking lot of the Chicago Park District on a complaint signed by an employee. A judgment of guilty of "littering" was entered in the Municipal Court of Chicago, First Municipal District of the Circuit Court of Cook County, Illinois on the 7th day of October 1966.

At the opening of the trial, the counsel for the petitioner challenged the constitutionality of the ordinance under which petitioner was charged. Further, counsel for the petitioner moved to strike the ordinance as void on its face and unconstitutional. ~~(p. 81)~~ The trial court held that the ordinance was not unconstitutional ~~(p. 98)~~.

Following the verdict, the defendant at the post-trial motion hearing renewed the motion made at the close of the evidence which questioned the constitutionality of the ordinance. The argument was that the ordinance is so broadly written that it is unconstitutional and cannot be applied to prevent Pastor Lyons from distributing a religious

tract, a privilege accorded him under the religious and free speech clauses of the First Amendment, as made applicable to the State of Illinois by the Fourteenth Amendment (p. 193). A notice of appeal was filed in the Municipal Court of Chicago, November 25, 1966, reciting again that this ordinance is in violation of the First and Fourteenth Amendments of the Constitution of the United States.)

An Appeal from the Circuit Court of Cook County, Illinois, First Municipal District, was heard in the Supreme Court of Illinois in the May Term, 1967. The Supreme Court of Illinois held the ordinance in question constitutional as applied in the circumstance of the case. A motion to stay the mandate of the Supreme Court of Illinois was filed June 11, 1968 and allowed on June 19, 1968.

REASONS FOR GRANTING THE WRIT

The Supreme Court of the State of Illinois has decided in this case a federal question in a way, we believe, not in accord with the applicable decisions of this court. The applicability and scope of the First and Fourteenth Amendments to the United States Constitution guaranteeing the free exercise of religion and freedom of speech are directly involved and hence this case is one of great concern to the citizens of the United States.

The opinion of the Supreme Court of the State of Illinois from which this appeal is taken holds that the Chicago Park District may forbid a person from distributing a religious pamphlet at a public parking lot under their control, using an ordinance designed to prevent "littering." The langauge of the Illinois court is so broad in its sweep as to adversely affect the right of citizens to distribute religious and other pamphlets at parks and other public places.

This court in *Schneider v. State of New Jersey*, 308 U.S. 147, (1939), held that a similar section of the Municipal Code of the City of Los Angeles was void "as applied to the petitioners conduct . . ." (p. 165)

The ordinance herein involved provides: "17-11. No person shall throw . . . place or scatter in or upon the park system or any park property . . . any . . . pamphlet . . . or thing of any kind." In *Schneider* the code of the city of Los Angeles provided: "No person shall distribute any hand-bill to or among pedestrians along or upon any street, sidewalk or park . . . or throw, place, or attach any hand-bill into or upon any automobile or other vehicle." The state courts in both *Schneider* and this case upheld the ordinances prohibiting the distribution of the pamphlets. But this court overruled the Supreme Court of California in *Schneider* with language completely apposite to this case. It is imperative that in the interest of the right of free press and religious liberty that this court reaffirm the rule laid down so clearly in *Schneider.* Otherwise, the door will be open for those who would take away the rights of others to express their religious views in printed pamphlets by distributing them in public places on the flimsy excuse that "littering" might attend the distribution. Constitutional rights should not be so easily swept aside.

The petitioner here, motivated by deep religious conviction, undertook to distribute a religious pamphlet containing "The Acts of the Apostles" from the New Testament by placing a pamphlet under the windshield wipers and inside cars parked in a public parking lot of the Chicago Park District. He had no intention of throwing them away or scattering them, as to him they represent the word of God. He was told he could not distribute the pamphlets and he held out for his constitutional right to do so. His was the first arrest for "littering" in fourteen years of the particular parking area. The petitioner claimed his constitutional right to communicate God's word from the time of his arrest to the filing of this petition for writ of certiorari in this Supreme Court of the United States.

The ordinance involved may be justified as a means of keeping the parking area clean when applied to actual "littering." Everyone knows instinctively what is meant by "littering"—the discarding of paper plates, empty pop bot-

tles, candy wrappers and the like in public places. But here we find a dedicated pastor of the Baptist faith distributing a chapter of the Holy Bible to persons whose souls he cares enough about to save. He is then convicted of "littering" and told he can no longer "distribute" his pamphlets since some may fall by the wayside and have to be picked up. It is true that the public and the state have a need to keep their parks neat but they may not deprive persons of important religious freedoms to achieve such a pedestrian goal. This cause should be heard by this court to defend and maintain its clearly expressed guidelines for religious liberty.

This court in *Schneider v. State of New Jersey*, 308 U.S. 147, decided November 27, 1939 faced four similar situations, each presenting a question of whether municipal regulations having to do with the distribution of pamphlets did or did not abridge one's constitutional rights to freedom of speech and of the press. As we pointed out above the closest factual situation in *Schneider* was the one involving the Municipal Code of the City of Los Angeles. That Code provided:

> "No person shall distribute any hand-bill to or among pedestrians along or upon any street, sidewalk or park, or to passengers on any streetcar, or throw, place, or attach any hand-bill into or upon any automobile or other vehicle."

The California court "sustained the validity of the ordinance on the ground that experience shows littering of the streets results from the indiscriminate distribution of hand-bills." (pp. 155, 156). It further held that ". . . the right of free expression is not absolute but subject to reasonable regulation and that the ordinance does not transgress the bounds of reasonableness." (p. 156). Further in *Schneider*, an ordinance of the City of Milwaukee, Wisconsin provided:

> "It is hereby made unlawful for any person * * * to throw paper * * * or to circulate or distribute any circular, hand-bills * * * in or upon any sidewalk, street, * * * or other public place, park or ground within the City of Milwaukee." (p. 155)

Further this court pointed out:

> "The testimony was that the action of the officers accorded with a policy of the police department in enforcement of the ordinance to the effect that, when such distribution resulted in littering of the streets, the one who was the cause of the littering, that is, he who passed out the bills, was arrested rather than those who received them and afterwards threw them away." (p. 156)

The Wisconsin Supreme Court held:

> ". . . that the purpose of the ordinance was to prevent an unsightly, untidy, and offensive condition of the sidewalks."

Further in *Schneider*, an ordinance of the City of Worcester, Massachusetts, provided:

> "No person shall distribute in, or place upon any street or way, any placard, handbill, flyer, poster, advertisement or paper of any description."

The defendants in the Massachusetts action distributed in a street leaflets announcing a protest meeting in connection with the administration of State unemployment insurance. They did not throw any of the leaflets on the sidewalk or scatter them. Some of them to whom the leaflets were handed threw them on the sidewalk and the street, with the result that some thirty were lying about. (pp. 156-157) Again the state supreme court held the regulation valid. This court speaking through Justice Roberts reversed in each case and remanded the causes for further proceedings. The holding of this court can be clearly found in the following:

> "As we have pointed out, the public convenience in respect of cleanliness of the streets does not justify an exertion of the police power which invades the free communication of information and opinion secured by the Constitution. (p. 163)
>
> "We are of opinion that the purpose to keep the streets clean and of good appearance is insufficient to jus-

> tify an ordinance which prohibits a person rightfully on a public street from handing literature to one willing to receive it. Any burden imposed upon the city authorities in cleaning and caring for the streets as an indirect consequence of such distribution results from the constitutional protection of freedom of speech and press. This constitutional protection does not deprive the city of all power to prevent street littering. There are obvious methods of preventing littering. Amongst these is the punishment of those who actually throw papers on the streets." (p. 162)

The reasoning and factual situations of three of the four cases involved in *Schneider* are so close to the factual situation and legal consequences here involved that it appears somewhat superfluous to keep repeating the excellent language of the decision in part when the whole decision is available for reading. Variations in facts are minor between the cases. The accident that we here have a parking lot of a park rather than a park itself is of no significance. No one suggests that the Rev. Vernon C. Lyons was throwing away or scattering chapters of a book sacred to him—the New Testament. He, his family, and friends were distributing copies of the "Acts of the Apostles" by placing the pamphlets under the windshield wipers of the cars, or in the cars themselves. Some were blown away by inadvertence, not by design. So as in *Schneider* it is important that this court hold that: ". . . the ordinance in question, as applied to the petitioners conduct, is void. . ." (p. 165)

The State of Illinois may, of course, by general and nondiscriminatory legislation regulate the times, the places, and the manner of distribution of pamphlets in its streets and parks. It may also outlaw the practice of littering. But no state, in the exercise of its housekeeping functions may invade the right of persons to distribute parts of the Bible as an act of religious devotion and dedication. The Corporation Counsel of the City of Chicago, the very office in which the prosecution of this case originated previously had no difficulty with the concept that ordinances designed to

deter objectionable practices such as littering may not be used to invade religious civil rights or the freedoms of speech and press. The attention of this court will be brought to the published opinions of the Corporation Counsel of the City of Chicago. Volume XVIII 4-15-1929 to 12-31-1935 (Opinion No. 7116) September 9, 1931 held invalid a city code which limited distribution of advertising matter. No. 8167 September 7, 1933 (p. 410) "Distribution Of Religious Tracts and Beliefs not prohibited by Ordinance."

Volume XX 1-1-1938 to 1-1-1940, No. 9885 September 14, 1938, pp. 222-5 held that handbills dealing with political economic and social views do not fall within the scope of the ordinance affecting distribution of handbills, distributed for advertising purposes. (p. 224). Volume XXI 1-1-40 to 1-1-1948 No. 10319 July 29, 1940 "Distribution of Non-Commercial Handbills in Public Ways" (pp. 195-7) cites the Supreme Court case of *Schneider v. State.* Also No. 10427 February 21, 1941, p. 198, Volume 23, 1949-1953 No. 11389 May 21, 1951 discusses "Handbills on Auto Windshields." The corporation counsel's office well knew how to handle the residual littering which was involved in the present case, what ordinances to rely upon, and how to avoid an unconstitutional, arbitrary and capricious invasion of the petitioner's rights.

Need we point out that an ordinance which would forbid the distribution of religious tracts in public parks and adjacent areas dedicated to the public would obviously be unconstitutional as a deprivation of the rights of freedom of the press and religion? Would not the act of an official in forbidding the same conduct on the ground that it violated a "littering" ordinance be equally unconstitutional? Both actions would deprive the religious person of his right to distribute his sacred message. There are proper regulations to deter the objectionable practice of littering and ordinances adequate to punish those who throw away their empty beer cans and candy wrappers on public property.

And there is no mystery as to how a park district can be diligent for clean parks without clearly involving itself in any deprivation of fundamental religious civil rights. In *Cantwell v. State of Connecticut* 310 U.S. 296 (1940) this court stated:

> "We hold that the statute, as construed and applied to the appellants, deprives them of their liberty without due process of law in contravention of the Fourteenth Amendment. The fundamental concept of liberty embodied in that Amendment embraces the liberties guaranteed by the First Amendment . . . *In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom,* (pp. 303-304) (Emphasis supplied)

This court should clarify the law in this respect and reaffirm its opinion in *Schneider.*

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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